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Letter dated 6 January 2003 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

On instructions from my Government, I have the honour to raise the following concern and position of my Government on the recent progress report of the Secretary-General on Ethiopia and Eritrea (S/2002/1393) for consideration in the forthcoming consultations of the Security Council on the matter.

Even though the Secretary-General's progress report is very comprehensive and concise, it inexplicably fails to mention that during the period it covers the Boundary Commission declared Ethiopia to be in violation of its Order of 17 July 2002. On that date, the Commission instructed Ethiopia to remove from Eritrean territory the settlers that it had placed there illegally subsequent to the 13 April 2002 award:

> "Ethiopia shall:
>
> "(i) Forthwith arrange for the return to Ethiopian territory of those persons in Dembe Mengal who have gone there from Ethiopia pursuant to an Ethiopian resettlement programme since 13 April 2002, and
>
> "(ii) Report to the Commission on the implementation of subparagraph (i) above no later than 30 September 2002."

Ethiopia never submitted the 30 September report in accordance with the Boundary Commission's instructions; moreover, it never removed the Ethiopian settlers from Eritrean territory as the 17 July Order required. On 7 November 2002, accordingly, the Boundary Commission unanimously determined that Ethiopia was in violation:

> Having regard to the Commission's Order of 17 July 2002, in failing to remove from Eritrean territory settlers of Ethiopian origin who have moved into that territory subsequent to the date of the Delimitation Decision, [Ethiopia] *has not complied with its obligation*.

The Secretary-General's progress report mentions in passing that "the Commission also issued determinations regarding Ethiopian settlements across the delimitation line", but is silent about what the determination provided. This silence can only be taken as implicitly condoning Ethiopia's defiance of the Boundary Commission's Order of 17 July 2002.

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The Secretary-General's silence as to Ethiopia's defiance of the Boundary Commission's Order is particularly striking in that both the Secretary-General and the Security Council explicitly endorsed the 17 July Order shortly after it was issued. In his report to the Security Council dated 30 August 2002 (S/2002/977), the Secretary-General wrote:

> "*I fully support the Boundary Commission's decision* that the parties should ensure that no population resettlement takes place across the delimitation line, *and look forward to the return to Ethiopian territory of those persons who recently moved inside Eritrean territory.*"

The Security Council likewise endorsed the Boundary Commission's Order of 17 July 2002 in its resolution 1430 (14 August 2002), stating in paragraph 5 that it:

> "Calls on the parties to cooperate fully and promptly with the Boundary Commission, including by implementing without conditions its binding Demarcation Directions, *by abiding promptly by all its Orders, including the two issued on 17 July 2002* (S/2002/935), and by taking all steps necessary to ensure the personal security of the staff of the Commission when operating in territories under their control;"

Ethiopia's continuing defiance of the Boundary Commission should not be tolerated. The parties have named the United Nations as the guarantor of the peace process; paragraph 14 of the 18 June 2000 Algiers Agreement on the Cessation of Hostilities states:

> "OAU and the United Nations *commit themselves to guarantee* the respect for the commitment of the two Parties and the determination of the common border on the basis of pertinent colonial treaties and applicable international law, through delimitation, demarcation and, in case of controversy, through the appropriate mechanism of arbitration."

Ethiopia has made it abundantly clear that it will continue to disregard the legitimate orders and determinations of the Boundary Commission so long as the international community continues to tolerate it. Eritrea calls on the Security Council immediately to take note of Ethiopia's defiance and to meet that defiance with appropriate measures.

I should be grateful if you would have the present letter circulated as a document of the Security Council.

(*Signed*) Ahmed Taher **Baduri**
Ambassador
Permanent Representative